

REFERENCE TO RWY 01/19 TO RWY 02/20. THIS BECOMES VOR/DME RNAV RWY 20, AMDT 2A.

#### Hickory

##### Hickory Regional

North Carolina

ILS RWY 24 AMDT 6.

FDC Date: 03/08/95

THIS CORRECTS NOTAM IN TL 95-07.

FDC 5/1075/HKY/ FI/P HICKORY REGIONAL, HICKORY, NC, ILS RWY 24 AMDT 6 . . . ADD NOTE . . . OBTAIN LCL ALSTG ON CTAF; WHEN NOT RECEIVED, USE WILKES COUNTY ALSTG AND INCREASE ALL DH/MDAS 300 FEET AND ALL VIS 1 MILE. THIS BECOMES ILS RWY 24 AMDT 6A.

#### Santa Fe

##### Santa Fe County Muni

New Mexico

ILS RWY 2 AMDT 4.

FDC Date: 03/13/95

FDC 5/1152/SAF/ FI/P SANTA FE COUNTY MUNI, SANTA FE, NM. ILS RWY 2 AMDT 4 . . . CHG NOTE TO READ . . . ADF REQUIRED.

[FR Doc. 95-8363 Filed 4-4-95; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release No. 34-35548]

#### Establishment of Commission Quorum Requirement

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is amending its rules to specify the number of Commission members that constitute a quorum. The amendments are designed to promote flexibility, finality, and collegiality of agency decisionmaking.

**EFFECTIVE DATE:** May 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Walter B. Stahr, Assistant General Counsel, or C. Hunter Jones, Special Counsel, Office of the General Counsel, at (202) 942-0888.

**SUPPLEMENTARY INFORMATION:** The Commission is modifying 17 CFR 200.40-200.42 to provide that three members constitute a quorum of the Commission, with two important exceptions. First, if the number of members in office is two or one, that number is sufficient for a quorum. Second, if the number of members in office minus the number disqualified

with respect to a matter is two, two constitute a quorum for purposes of that matter.

The Securities Exchange Act of 1934 ("Exchange Act"), unlike many statutes that establish federal agencies, does not establish a quorum requirement for the Commission. In the past, the practice of the Commission has generally been that three members constitute a quorum. See *In re International Paper & Power Co.*, 2 SEC 792, 793 n.1 (1937), *rev'd on other grounds sub nom. Lawless v. SEC*, 105 F.2d 574 (1st Cir. 1939). This practice, however, has never been formally adopted as a policy or rule.

The Commission, which currently has only three members, has reconsidered its quorum practice. It has decided to adopt a general rule, with the exceptions discussed below, that three commissioners are required for a quorum. Although this rule may create difficulties when only three commissioners are in office, these difficulties are outweighed by the benefits of having all three commissioners deliberate and vote on matters.

Situations arise, however, in which only two members are able to participate in a matter. When three members are in office, for example, one member may recuse himself or herself from considering a matter. See 17 CFR 200.60. Similarly, it is possible that, at some point, there would be only two commissioners in office. In the past, the Commission has resorted to the duty officer procedure to deal with urgent matters as to which only two commissioners are available. See 17 CFR 200.42. The duty officer procedure, however, because it is a form of delegation, is not available for rulemaking. See Exchange Act Section 4A(a). Moreover, although a duty officer's action is Commission action unless and until the Commission directs otherwise, see 17 CFR 200.42(c)(3), the Commission cannot affirm the duty officer's action when only one other Commission member is available to consider the matter. Finally, and perhaps most importantly, it is more consistent with the collegial nature of the Commission to allow the two qualified members to address such matters as a Commission.

The Commission also believes that it would be appropriate to preserve the flexibility necessary to take effective action in the event, however unlikely, that there would be a period with only one commissioner in office. To provide adequate flexibility in this unlikely situation, the Commission is providing that one commissioner would constitute a quorum if no other commissioners are

in office. The Commission does not believe it is necessary, at this time, to provide that one commissioner may constitute a quorum when disqualifications result in only one commissioner being available to deal with a particular matter.

Accordingly, the Commission is adopting a new rule, at 17 CFR 200.41, providing that three members constitute a quorum unless only two members or one member are in office, or unless, because of disqualifications, only two members are available to deal with a particular matter. The Commission is also amending 17 CFR 200.40 to clarify that it applies only to meetings that are subject to the Government in the Sunshine Act.

The Commission has determined that these amendments and additions to its procedural rules relate solely to the agency's organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice and comment are not applicable. See 5 U.S.C. 553. Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other laws, are not applicable. See 5 U.S.C. 601-612.

#### Effects on Competition

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furthering the purposes of the Exchange Act. See 15 U.S.C. 78w(a)(2). The Commission has considered the changes adopted in this release in light of the standards cited in section 23(a)(2) and believes that their adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

#### Statutory Basis of Rule

The amendments to the Commission's rules are adopted pursuant to the authorities set forth therein.

#### List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

#### Text of Amendments

For the reasons set out in the preamble, title 17, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart B, is revised to read as follows:

**Authority:** 5 U.S.C. 552b; 15 U.S.C. 78d-1 and 78w.

2. Section 200.40 is revised to read as follows:

### **§ 200.40 Joint disposition of business by Commission meeting.**

Any meeting of the Commission that is subject to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, shall be held in accordance with subpart I of this part. The Commission's Secretary shall prepare and maintain a Minute Record reflecting the official action taken at such meetings.

### **§§ 200.41 and 200.42 [Redesignated as §§ 200.42 and 200.43]**

3. Sections 200.41 and 200.42 are redesignated as §§ 200.42 and 200.43, and § 200.41 is added to read as follows:

### **§ 200.41 Quorum of the Commission.**

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

### **§ 200.42 [Amended]**

4. In newly redesignated § 200.42, in paragraph (a) the reference to "§ 200.42" is revised to read "§ 200.43" and in paragraph (b) the reference to "§ 200.41(a)" is revised to read "§ 200.42(a)".

### **§ 200.43 [Amended]**

5. In newly redesignated § 200.43(c)(1), the reference to "§ 200.42(a)" is revised to read "§ 200.43(a)" and the reference to "§ 200.41" is revised to read "§ 200.42".

### **§ 200.401 [Amended]**

6. In § 200.401(a), the reference to "§ 200.41 or § 200.42" is revised to read "§ 200.42 or § 200.43".

Dated: March 30, 1995.

By the Commission.  
**Margaret H. McFarland,**  
*Deputy Secretary.*  
[FR Doc. 95-8259 Filed 4-4-95; 8:45 am]  
BILLING CODE 8010-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket No. 93N-0283]

RIN 0905-AD89

### Food Labeling; Placement of the Nutrition Label on Food Packages

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its food labeling regulations to provide increased flexibility in the placement of the nutrition label on packaged foods. In situations in which the principal display and information panels cannot accommodate all the required labeling information, and the package has a total surface area available to bear labeling of greater than 40 square inches (sq in), the amendment allows the nutrition label to be placed on any panel that can be readily seen by the consumer. This action is being taken in response to comments received on the final rule of January 6, 1993, entitled "Food Labeling Regulations Implementing the Nutrition Labeling and Education Act of 1990; Opportunity for Comments," (hereinafter "the implementation final rule"), and on the proposed rule of August 18, 1993, entitled "Food Labeling; Placement of the Nutrition Label on Food Packages."

**EFFECTIVE DATE:** May 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5430.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. The Principal Display Panel and Information Panel

Under FDA's regulations (§ 101.1 (21 CFR 101.1)), the part of a label that is most likely to be displayed, presented, shown, or examined by a consumer under customary conditions of display for retail sale is called "the principal display panel." This panel must include

the statement of identity for the product and its net weight. In addition, to provide consistency and uniformity in the presentation of label information to consumers, FDA has provided for a second display panel for information that must be included on the label but that is not required to appear on the principal display panel. This alternate panel is called "the information panel" (§ 101.2 (21 CFR 101.2)).

The information panel is defined in § 101.2(a) as that part of the label that is immediately contiguous and to the right of the principal display panel. Section 101.2(a)(1) specifies that if the first panel to the right of the principal display panel is too small to accommodate the necessary information, or is otherwise unusable label space, the panel immediately contiguous and to the right of that part of the label may be used as the information panel. Accordingly, FDA's regulations direct manufacturers to move the information required to appear on the information panel as a unit when the first available information panel will not accommodate all the required information. Pursuant to § 101.2(e), all information appearing on the information panel must be presented in one place without other intervening material.

Section 101.2(b) states that the ingredient listing; name and place of business of the manufacturer, packer, or distributor; and nutrition information must appear either on the principal display panel or on the information panel, unless otherwise specified by regulation. Section 101.2(d)(1) requires that all information required to appear on the principal display panel or the information panel appear on the same panel unless there is insufficient space, in which case it may be divided between the principal display panel and information panel in accordance with §§ 101.1 and 101.2. In determining the sufficiency of the available space, under § 101.2(d)(1), any vignettes, designs, and other nonmandatory label information are not to be considered.

#### B. Mandatory Nutrition Labeling

In the **Federal Register** of January 6, 1993, FDA issued a final rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision, Format for Nutrition Label" (58 FR 2079) (hereinafter referred to as "the mandatory nutrition labeling final rule"), which included provisions to require nutrition labeling on most foods that are regulated by FDA and to specify a new format for declaring nutrition labeling. FDA took this action, in part, to implement the Nutrition Labeling and